

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2970 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DHARMENDRA PARSOTTAMDAS

SOLANKI

Versus

STATE OF GUJARAT

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Appearance:

MR HR PRAJAPATI for Petitioner

Mr.LR POOJARI, A.G.P. for Respondents Nos.1, 2 & 3

MR SUNIL C PATEL for Respondent No. 4

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 08/05/97

ORAL JUDGEMENT

1. The petitioner - Dharmendra Parsottamdas Solanki has brought under challenge the impugned detention order dated 11th February 1997 passed by respondent No.2, being the District Magistrate, under Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short 'PBM Act')

in this petition under Article 226 of the Constitution of India.

2. The grounds on which the impugned order of detention has been passed appear at Annexure : B. They inter-alia indicate as under :

The petitioner has been holding licence bearing No.262/81 and also the authorisation bearing No.139 for running a fair price shop situated at Vijaynagar, Harni Road, Vadodara City. The period of such licence is renewed upto 31.12.2000.

The statement of the petitioner was recorded by the Mamlatdar, Padra on 30.1.1997 and the partnership deed was also submitted. As per the Partnership deed the administration of the fair price shop was transferred to Shri Guraldas Savaldas Chavhani. The petitioner has unauthorisedly transferred the administration of the fair price shop to the son of Guraldas (Vinodbhai Chavalani). The petitioner has stated that he has not been going to the shop since 1984 and has been serving as a clerk with one Yadav Construction, near R.C.Patel Estate, third floor of Shailaja Complex.

The statement of Vinodbhai Chavalani was recorded on 16.1.1997 and 18.1.1997 by the Mamlatdar, Padra. He has stated that he himself has been managing the affairs of the fair price shop. It is recited in the panchnama dated 18.1.1997 that the panchas have not seen the petitioner in the shop at any point of time and the shop is being administered by Shri Vinodbhai Chavalani and this has been supported by the card holders.

In a surprise visit dated 16.1.97 at the fair price shop of the petitioner it was found that the stock of 370 ltrs. of kerosene was received from M/s.K.G.Shah Kerosene Depot under Bill No.8300 which had not been taken on Stock Register. It would, therefore, appear that this stock of kerosene was not taken on stock Register for the purpose of disposing of the same in black market.

The cross checking of sale bills of kerosene for the month of December, 1996 made by the Mamlatdar, Padra and Deputy Mamlatdar (Supply) and the team of Supply Inspector by approaching each of the card holders revealed that the stock of 5515 ltrs. of kerosene was sold away in black market.

Though one Surti Babubhai Parsottambhai has been

holding Card bearing No.828 of Shop No.213, Sale Bills No.375, 619, 1169 and 639 each of five ltrs. were prepared in his name and thereby the stock of kerosene represented by such bills was disposed of unauthorisedly.

After verifying the stock Register for kerosene the stock of 55.5 ltrs. of kerosene was found less. After deducting permissible shortfall, the total shortfall was found to be 53.5 ltrs. The said stock of kerosene appears to have been disposed of in black market.

It has finally been asserted that the statements of 77 card holders revealed that a sum of Rs.15 was being charged from the card holder instead of Rs.12.75 ps. per five ltrs. of kerosene and thus extra amount of Rs.2.25 ps. was being charged per five ltrs. of kerosene.

It has been alleged that in this fashion the petitioner has been committing the breach of the provisions of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981, and that the petitioner having committed breach of the said order was required to be preventively detained under the aforesaid provision of PBM Act, else the petitioner might continue his illegal activity.

3. The petitioner has challenged the impugned order of detention as also his continued detention under the said order on number of grounds, inter-alia, on the ground that the petitioner made representation dated 24th February 1997. The said representation was forwarded by the Jail Authority to the Detaining Authority vide letter dated 25.2.1997, who in turn forwarded the same to the State Government vide letter dated 4th March 1997. The State Government forwarded the said representation to the Central Government on 10th March 1997 and the Central Government received the said representation on 11th March 1997. It has been submitted that there is an unexplained delay in considering the said representation by the concerned Authority including the Central Government. This is in contravention of Article 22(5) of the Constitution of India. The Central Government in its Affidavit in Reply has rendered explanation in following terms :

"As regards the contention made in Para : (n), (p), (t), (v) and (x) it is pointed out that a representation dated 24.2.1997 in favour of detinue forwarded by the State Government was received in the concerned Section on 11.3.1997.

The parawise comments of the State Government on the representation dated 24.2.1997 was received in the concerned Section on 25.3.1997. After considering the contents of the representation along with parawise comments on the representation dated 24.2.1997 of the State Government and other relevant records the same were rejected by the Competent Authority in the Central Government. The decision of the Central Government was conveyed to the Superintendent, Central Prison, Surat on 27.3.1997 by telegram with a direction to convey the same to the detenu. The State Government was also informed simultaneously on the very same day."

4. It would appear from the aforesaid explanation rendered by the Central Government that the period between 11.3.1997 and 25.3.1997 has obviously remained unexplained. However, at the request of Mr. Sunil C. Patel, learned Additional Standing Counsel for the Central Government the period was further verified from the file of the State Government and from that also Patel was not able to explain the period between 11.3.1997 and 14.3.1997. Thus, there is no explanation for 11.3.1997, 12.3.1997 and 13.3.1997. Mr. Patel, however, places reliance upon a Bench decision of this Court in the case of Bharatkumar Ishwarbhai Patel V/s. District Magistrate, Bharuch, reported in 1989 (2) G.L.H. 312 . There the facts would indicate that the representation was received on 15.3.1988, parawise comments from the State Government were called for on 16.3.1988 (immediately on the next day). Thus in the background of passage of one day the submission appears to have been that the delay of one day was not explained. In that light the Bench had an occasion to make following observations :

"While examining the question with regard

to delay in considering the representation by the appropriate authority one has to be pragmatic and one must have an eye on the realities of life. When it is stated that every day's delay should be explained this is required to be understood in pragmatic manner. Otherwise one may ask why not explain the delay of every hour and why not explain the delay minute by minute. All that is required to be seen is as to whether the authority had shown due promptness. Even while judging due promptness on the part of the authority concerned, the fact that the authority is working in the system where to work in tardy

and prolonged fashion has become the rule of life."

In my opinion the aforesaid decision would not be applicable to the facts with regard to delay noted hereinabove. Here there is clearly delay of at-least three days which has remained entirely unexplained by the Central Government. Reference in this connection may be made to a decision in the case of Harish Pahwa V/s. State of U.P., reported in AIR 1981 SC 1126 and Aslam Ahmed Zahire Ahmed Shaik v/s. Union of India, reported in AIR 1989 SC 1403. Thus, the avoidable and unexplained delay has clearly resulted in rendering the continued detention of the petitioner illegal and constitutionally impermissible.

5. As the petitioner succeeds on the aforesaid ground of delay in considering the representation by the Central Government, it would not be necessary to deal with the other grounds of challenge levelled against the impugned order of detention.

In the result, this petition is allowed. The continued detention of the petitioner - Dharmendra Parsottamdas Solanki, under the impugned order of detention is directed to be put an end to and the petitioner shall be released immediately, if he is not required to be detained in any other case. Rule made absolute in the aforesaid terms.

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